IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Rajasthan Small Industries Corporation Limited vs. Firm J.N.Industries, Udaipur
(S.B.Civil First Appeal No.26/1988)

Date of judgment:- 25.10.2007

HON'BLE MR.JUSTICE SANGEET LODHA

Mr.Akilesh Agarwal, for the appellant.
Mr.Pawan Ojha on behalf of Mr.S.G.Ojha, for the respondent.

BY THE COURT:-

Reportable

1. This appeal is directed against judgment and decree dated 20.10.1987 passed by the learned Additional District Judge, No.1, Udaipur in Civil Suit No.41/1983, whereby the suit preferred by the plaintiff-respondent against the defendant-appellant for recovery of a sum of Rs.15,968/- has been decreed to the extent of Rs.13,575/-. The plaintiff has also been held entitled for interest on principal amount Rs. 11,075/- @ 6% from the date of the filing of the suit till the recovery thereof.

2. The brief facts giving rise to the present appeal are that the defendant-appellant M/s Rajasthan Small Industries Corporation Limited (hereinafter referred to as "the defendant Corporation"), a government of Rajasthan concern, used to organise exhibition cum sale in the various parts of the country of the handicraft products manufactured by small industries in

the State. The plaintiff, a manufacturer of inter-alia wooden handicraft articles was permitted to keep its product i.e. wooden articles on consignment basis at Rajasthan Handicrafts Emporium, New Delhi, Jaipur, Calcutta, Bombay, Mt. Abu, Agra, Udaipur and also at the counter in J&K Government Emporium, Srinagar for sale on payment of commission @ 15% on the net sales. However, the rate of commission on the sales at Srinagar counter was fixed @ 25% on the net sales.

3. In the year 1977, the plaintiff sent the wooden toys worth Rs.13,025/- for sale on consignment basis to be kept in the exhibitions organized by Rajasthan Handicraft Emporium, Bombay, a unit of the defendant Corporation . The details of the goods sent vide various invoices have been set out by the plaintiff in para no. 4 of the plaint. According to the plaintiff, on the sale of the goods the defendant Corporation was required to remit the payment after deduction of commission @ 15% as agreed upon and the unsold goods were required to be returned. However, neither the amount received on sale of goods was remitted, nor the goods remained unsold were returned by the defendant Corporation to the plaintiff. In these circumstances, the plaintiff preferred a suit for recovery of a sum of Rs.11,075/-, the amount arrived at after deducting 15% commission from the value of the goods a sum of Rs.13,025/-. The plaintiff also claimed interest @ 12% quantified at

Rs.3,993/- for a period of three years. The plaintiff also claimed travelling expenses a sum of Rs.800/- incurred on account of travelling undertaken by its representative for the recovery of the amount and so also the postal expenses a sum of Rs.100/-. Thus, the plaintiff prayed for a decree against the defendant for a sum of Rs.15,968/-.

4. The suit preferred was contested by the defendant Corporation by filing a written statement. It was averred on behalf of the defendant Corporation that the goods as alleged by the plaintiff were never sent and handed over to it. The plaintiff was only permitted to keep its goods at the counter for sale at the places enumerated in communication dated 4th November, 1977 issued by the Managing Director of the defendant Corporation. It was further alleged by the defendant Corporation that the goods belonging to the plaintiff worth Rs.5,501.95 were sold in the exhibition organized at the Bombay counter of the Corporation. It was alleged that the Corporation incurred the expenditure towards the rent Rs.675/-, discount Rs.31.10, salary to the staff Rs.608/- and octroi duty Rs.621/-, besides, the corporation was also entitled for commission @ 15% quantified at Rs.724.40 and thus, as against the sale proceeds of Rs.5,501.95, the plaintiff was entitled for the payment of a sum of Rs.2823.85 and out of that amount , a sum of Rs.347.25 had already been paid to the plaintiff by cheque. Yet another cheque

for Rs.2000/- dated 2.6.1979 was sent to the plaintiff but the same was not accepted by it. It was further averred that the goods which remained unsold were returned to the plaintiff vide voucher nos.2531, 2791 and 2792 vide G.T.R.No.27093 dated 25.1.1979 which were not accepted by the plaintiff and the G.T.Rs. were sent back. However, on the repeated requests being made and the G.T.R. being sent again, the delivery of the goods were taken by the plaintiff. For the remaining goods, the plaintiff was requested to take the delivery but, he deliberately avoided to receive the same. According to the defendant Corporation the goods of the plaintiff were never purchased by the Corporation instead as per the terms and conditions of the agreement, the plaintiff was required to keep the goods at the exhibition/emporium of the Corporation and sale the same through its own representatives. It is on the request of the plaintiff that a person was employed by the defendant Corporation for the sale of the goods at counter. The defendant Corporation averred that the goods unsold were returned to the plaintiff though, it was not its responsibility under the contract. Accordingly, it was prayed that the plaintiff is not entitled for any relief.

5. On the basis of the pleading of the parties, following issues were framed by the learned trial Court for determination:-

"1-आया वादी फर्म एक पंजीकृत साझेदारी फर्म है ?

2- आया वादी फर्म ने प्रतिवादी द्वारा सन् 77 में आयोजित राजस्थान हैण्डीक्राफ्ट एम्पोरियम'' बम्बई में बिक्री हेतु 13025/- रूपये के लकड़ी के खिलोने भेजे जिसका विवरण दावे के पैरा नं. 4 में दिया हुआ है ?

3- आया प्रतिवादी द्वारा इस माल की बिक्री से प्राप्त रकम पर 15 % अपना कमीशन काट कर बकाया रकम वापिस वादी को लौटाने का इकरार था जो वादी ने नहीं लौटाई और न ही माल लौटाया?

4-आया वादी प्रतिवादी से लकड़ी के खिलौने के कीमत के 11075/- रूपये मूल, 3999/- रूपये ब्याज, यात्रा व्यय के 800/- व डाक व्यय 100/- कुल 15968/- रूपये पाने का अधिकारी है ?

5-आया इस अदालत को दावा हाजा सुनने का अधिकार क्षेत्र नहीं है ?

6-आया वादी को प्रतिवादी की प्रदर्शनी में काउन्टर पर केवल अपना माल स्वयं ले जाकर बेचने की अनुमति दी गई थी और प्रतिवादी की जिम्मेदारी माल बेचने की या वापिस करने की नहीं थी ?

7-आया संलग्न मूल अनुसूची ''अ'' के अनुसार 5501रूपये 95 पैसे का ही माल प्रदर्शनी में बम्बई में बिक्री किया गया जिसका कमीशन 724/- 40 पैसे किराया 675/- रूपये डिस्काउन्ट 31=10 पैसे व वेतन 608/- व आक्ट्राय 621/- रूपये वादी की ओर से प्रतिवादी ने अदा किये जिसको काटने के बाद वादी को 2823/- 85 दैय हुए उसमें से 347/- 25 वादी को जरिये चैक भुगतान कर दिये गये और बाकी रकम 2000/- रूपये का चैक वादी को भेजा जो उसने जानबूझकर लेने से इन्कार कर दिया ?

8-आया प्रतिवादी को माल लौटाने की जिम्मेदारी नहीं थी और उसने प्रतिवादी द्वारा भेजा गया माल बाउचर नं. 2531,2791, 2792 जरिये पी टी आर. न लौटा दिया गया बाकी माल वादी इरादतन वापिस नहीं मंगवा रहा है, और इसका क्या असर है?

9-दादरसी ?”

6. In support of the case, the plaintiff got examined P.W. 1 Madan Kataria as witness and produced documentary evidence

Ex.1 to Ex.33. The defendant Corporation produced D.W. 1 Anant Krishan Binju, D.W. 2 Ram Vinod Purohit as witnesses and also produced documentary evidence Ex.A/1 to Ex.A/62. In rebuttal, the plaintiff again produced P.W. 1 Madan Kataria as witness.

7. After hearing the arguments of the learned counsels appearing on behalf of the parties and due consideration of the material on record, the learned trial Court decided the issues no. 1 to 4 in favour of the plaintiff and issues no. 5 to 8 against the defendant. Accordingly, the suit preferred by the plaintiff has been decreed against the defendant Corporation as indicated above.

8. I have heard the learned counsel for the parties, considered the rival submissions and also perused the record.

9. It is contended by the learned counsel for the appellant that the learned trial Court has erred in deciding issue no. 2 in favour of the plaintiff and against the defendant. It is contended that the plaintiff has not been able to prove that it had sent the goods worth Rs.13,025/- for sale at the Bombay counter of the defendant Corporation. Relying on the communications Ex.1 and Ex.A/1 it is submitted by the learned counsel that the plaintiff was only permitted to sale its goods at the various exhibition counters of the Corporation on the terms and conditions agreed upon and it was the duty of the plaintiff to take care of the goods

kept for sale at the counters. The learned counsel submitted that on the basis of evidence on record it is proved that the Corporation has paid a substantial amount to the plaintiff and has also returned the goods unsold. It is submitted that the defendant had no responsibility to return the unsold goods yet it has returned the same . The learned counsel urged that the plaintiff was bound by the terms and conditions agreed upon and cannot claim anything beyond the same. If the plaintiff has not taken the care of its goods and has not even accepted the delivery of the goods returned by the defendant Corporation then, the defendant cannot be held liable for no fault on its part. Precisely, the learned counsel contended that neither the sale of the goods at the counter nor the return of the goods unsold was the responsibility of the Corporation under the terms and conditions agreed upon. Therefore, the defendant cannot be fastened with the liability.

10. Per contra, the learned counsel appearing for the respondent contended that on the basis of the material on record it stands proved beyond doubt that the entire goods sent by the plaintiff firm to the defendant Corporation for sale at its Bombay counter were sold and therefore, after deducting the commission @ 15% , the plaintiff was entitled for the value of the goods sold, a sum of Rs.11,075/-. The learned counsel urged that admittedly, no amount except a sum of Rs.347.25 has been paid

by the defendant to the plaintiff. A cheque dated 2.6.1979 for Rs.2,000/- sent by the defendant to the plaintiff could not be encashed and accordingly the same was returned to the defendant. While relying upon the documentary evidence particularly, Ex.A/2, Ex.10, Ex.11 etc., the learned counsel contended that it is apparent on the face of record that the goods unsold were required to be returned to the plaintiff by the defendant Corporation. The learned counsel submitted that the representative of the plaintiff was told in unequivocal terms by the authority of the defendant Corporation that the entire goods sent by the plaintiff firm have been sold. In this view of the matter, the plaintiff was entitled for the value of the goods sold after deducting the commission payable to the defendant Corporation according to the terms and conditions agreed upon. The learned counsel submitted that the learned trial Court has scanned the entire evidence on record in its entirety and objectivity and the findings arrived at do not suffer from any infirmity or illegality. Accordingly, it was prayed that the appeal preferred by the appellant deserves to be dismissed being devoid of any merit.

11. The precise questions emerging for the rival submissions of the parties which requires consideration may be summarised thus:-

(i)Whether the plaintiff had sent the goods viz. wooden toys

worth Rs.13,025/- for sale in the exhibition organized by the defendant Corporation at Rajasthan Handicraft Emporium, Bombay?

(ii) Whether under the terms and conditions agreed upon between the parties, the defendant Corporation had no liability to sell the goods at the counter and return the unsold goods to the plaintiff?

(iii) Whether the defendant Corporation was liable to remit the payment received on sale of goods after deducting the commission payable @ 15% on net sales?

(iv) Whether the goods returned by the defendant Corporation were not accepted by the plaintiff and the delivery of the remaining goods were not taken by it then, what is the effect of such omission/lapse on the part of the plaintiff?

(v) Relief?

12. Coming to the first question it is to be noticed that the details of the goods sent for sale at the Bombay counter of the defendant Corporation have been set out in para no. 4 of the plaint. The specific averments made in this regard have not been controverted by the defendant specifically. The defendant Corporation has denied that the goods worth Rs.13,025/- as alleged was sent by the plaintiff . It is not in dispute that the plaintiff was permitted to keep its goods viz. wooden toys on consignment basis at Rajasthan Handicraft Emporium, Bombay. The defendant has not come with the specific case that out of the various consignments referred in para no. 4 of the plaint which consignments have not been received by it. The defendant has taken the stand that the goods were not sent

under its instruction and the same were not delivered to it. However, at the same time the defendant has taken the stand that on taking the delivery, the freight and the octroi duty payable on the goods were paid by it. It has been further stated that as against the goods sold worth Rs.5,595/-, the amount as detailed in para no. 4 of the written statement was paid to the plaintiff and the remaining goods were sent back to the plaintiff delivery whereof was not accepted by it. If the goods were not sent by the plaintiff as alleged and the same were not handed over to the defendant Corporation then, the question of the defendant Corporation making payment of the amount received as a result of the sale after deducting the commission and other expenses does not arise. The plaintiff has placed on record the various vouchers (Ex. 2 to Ex. 5) and the goods receipts (Ex. 7 to Ex.9)issued by the transport company whereby the goods were sent to the Rajasthan Handicraft Emporium, Bombay, a unit of defendant Corporation. It is to be noticed that voucher Ex.2 and the goods receipt (Ex.7) relates to the goods sent for exhibition at Bangalore counter of the defendant Corporation but, from the correspondence on record, it appears that the account of goods sent for sale at the Bangalore counter was also to be settled by the Bombay unit of the defendant Corporation. The learned counsel appearing for the appellant pointed out that the plaintiff was allowed to keep its goods for sale at different

counters on consignment basis vide Ex.1 dated 4.11.1977, therefore, the question of goods being sent by the plaintiff vide invoice no. 4909-10 dated 2.10.1977 does not arise. As a matter of fact, the goods covered by invoice no. 4909-10 dated 2.10.1977 (Ex.2) were dispatched vide goods receipt no. 1664 dated 24.11.1977(Ex.7), therefore, the contention raised by the learned counsel for the appellant has no substance. It is pertinent to note that the defendant has even not produced the relevant record kept by it showing the details of the goods received from the plaintiff for sale on consignment basis. Thus, on the basis of the material on record, the irresistible conclusion which can be drawn is that the goods worth Rs.13,025/- details whereof have been set out in the plaint which is supported by documentary evidence Ex. 2 to Ex. 5 , and Ex. 7 to Ex. 9 were sent by the plaintiff to the defendant Corporation for sale on consignment basis and the same were duly received by it. Thus, the learned trial court has committed no error in deciding the issue no. 1 in favour of the plaintiff and against the defendant.

13. The next question comes for consideration is whether the defendant Corporation had no liability for sale of the goods at the counter and returned the unsold goods to the plaintiff. It is required to be noticed that except communication dated 04.11.1977 (Ex.1) and communication dated 22.11.1977 (Ex.

A/1), no document setting out the terms and conditions agreed upon between the parties has been placed on record. Vide Ex.A/1 the plaintiff was allowed to keep its products i.e. wooden articles on consignment basis at various counters of the defendant Corporation in different parts of the country. In the said document it has nowhere been mentioned that the goods kept for sale at the counters maintained by the defendant Corporation shall be at risk of the parties and they are required to manage the sale counters on their own. However, in Ex.A/1 dated 22.11.1977 whereby, inter alia the plaintiff was allowed to conduct sale of its product i.e. wooden toys in the Rajasthan Handicraft Exhibition being organized by Rajasthan Handicraft Emporium, Bombay and Visvaswaraya Industrial Trade Centre, Bangalore, it has been mentioned that the parties will have to arrange their own sales assistant on their counters. But, the fact remains that the sale of the product of the plaintiff on the counter at Bombay was undertaken by the defendant Corporation itself. All that it has been alleged by the defendant Corporation is that on the request of the plaintiff, a sale assistant was employed by the defendant Corporation. From bare perusal of the various documents placed on record Ex.A/2, Ex.A/4, Ex.A/7, Ex.10, Ex.11, Ex.33, etc., it is manifestly clear that the sale of the goods received was effected by the defendant Corporation and it was required to account for the

sale proceeds and also to return the unsold goods to the plaintiff.

Vide communication dated 27th May, 1978(Ex.A/2), the Senior Manager Executive(T.C.), Rajasthan Small Scale Industries, Jaipur directed inter alia the Manager, Rajasthan Handicraft Emporium, Bombay to arrange an early payment to the plaintiff with the caution that in case immediate action is not taken to clear the dues of the party, the action against defaulting Manager will be taken. Again vide communication dated 20th November, 1978 (Ex.10) addressed to the Manager, Rajasthan Handicraft Emporium, Bombay, the Account Officer (T.C.) of the defendant Corporation directed to expedite the due payment to the plaintiff. It is pertinent to note that in communication dated 28.11.1978(Ex.11), the Manager, Rajasthan Handicraft Emporium, Bombay has accepted in unequivocal terms that the goods belonging to the plaintiff are lying with them but, on account of change of the Management in the office and he being a new man, requires little more time to check the goods and to take final decisions. Thereafter, part of the unsold goods were sent by the defendant Corporation to the plaintiff vide G.T.R. No. 27046 dated 20.01.1979 (Ex.A/8) and G.T.R. No. 27093 dated 25.01.1979 (Ex.A/11). The defendant Corporation has also given the account of the goods of the plaintiff alleged to have been sold by its counter at Rajasthan

Handicraft Emporium, Bombay. If the defendant Corporation had not undertaken the sale of the plaintiff's goods at its counter and it had no liability to return the unsold goods, then there was no occasion for the defendant Corporation to tender the account, offer the payment to the plaintiff for the goods sold and return of the unsold goods vide Ex.A/8 and A/11. It is pertinent to note that the witness DW2 Ram Vinod Purohit has stated in his oral deposition in unequivocal terms that the account of the goods sold is maintained but no details of the stock is kept. He has further stated that no standing rules are there that on what condition the business will be carried out. Thus, on the basis of the evidence on record, it can be safely concluded that the liability to sell the goods sent by the plaintiff on consignment basis was undertaken by the defendant Corporation and so also to return the unsold goods to the plaintiff. Thus, the learned trial court has committed no error in deciding the issue no. 6 in favour of the plaintiff and against the defendant Corporation.

14. I find it convenient and appropriate to consider the questions no. 3 & 4 (supra) together. Admittedly, as against the goods worth Rs.13,025/-, the defendant has paid to the plaintiff only a sum of Rs.347.25 . It is also not in dispute that yet another cheque dated 2.6.1979 for Rs.2,000 sent by the defendant to the plaintiff could not be encashed , therefore, the same was returned by the plaintiff to the defendant vide

communication dated 11th July, 1979(Ex.A/17). The defendant has not sent any amount to the plaintiff thereafter. Even, according to the defendant, the goods worth Rs.5,501.95 were sold at the exhibition organized by the defendant at its Bombay emporium and after deducting the amount payable as commission and other expenses, an amount of Rs.2,823.85 was found payable to the plaintiff.

From the evidence on record, it appears that no accounts of the goods sent by the plaintiff to be kept for sale at the Bombay emporium of the Corporation were maintained. As a matter of fact, it has been admitted by the witness D.W. 1 produced on behalf of the defendant that the entries of the bills received along with the goods were not made in the register for the reason that the goods were kept at the risk of the plaintiff. As noticed above, the witness D.W. 2 Ram Vinod has stated that the account of the goods sold is maintained but no details of the stock is kept. It is relevant to notice that no written contract,if any, entered in between the parties has been placed on record. Therefore, there is no reason to presume that any terms and conditions other than set out in Ex.1 were existing between the parties. It is not even the case of the defendant that any terms and conditions were agreed upon between the parties for payment of expenses other than 15% commission agreed upon. There is no evidence on record to show that the any assistant

was employed for sale of the goods, on the request being made by the plaintiff. The liability for payment of salary to the assistant employed on the various counters where the goods of other entrepreneurs were also kept for sale cannot be fastened on the plaintiff . From the perusal of the import octroi bill (Ex.30), the receipt dated 20.11.1978(Ex.A/28) and the various vouchers issued by the transport company at Bombay and Bangalore, it appears that the freight and octroi duty, a sum of Rs.621/- were paid by the defendant on behalf of the plaintiff. Since, the contract was to sale the goods of the plaintiff to be kept at the counter on commission basis, therefore, all expenses were obviously to be borne by the plaintiff. Therefore, the defendant is entitled for reimbursement of the amount of freight and octroi paid by them.

15. From the material on record, it appears that even after conclusion of the exhibition the account of the plaintiff was not settled. Consequently, the payment due to the plaintiff was not made and the unsold goods were not returned immediately. As a matter of fact, since the accounts of goods received for sale was not maintained by the defendant Corporation, therefore, they were not even in position to ascertain the actual quantity of the goods remained with them unsold.

16. As noticed above, vide communication dated 28.07.1978 (Ex.11), the Manager, Rajasthan Handicraft Emporium, Bombay

has accepted in unequivocal terms that the goods belonging to the plaintiff were lying with them but on account of change of the Management in the office and he being a new man required little more time to check the goods and to take final decisions. It is also to be noticed that on 13.11.1978, a letter was sent by the plaintiff to the Manager, Rajasthan Handicraft Emporium, Bombay to send the unsold goods duly packed to the plaintiff . The plaintiff undertook to bear the expenses of packing charges, railway freight or transport charges as the case may be. At the same time, a note was appended in the said letter that "when the undersigned visited your emporium three times, he found that all the goods lying in the emporium we(sic were) sold but the sale proceeds were not given as the accounts were not ready. So please arrange to sent draft for Rs.13,025/-." The said letter dated 13.11.1978 was responded by the Senior Manager, Rajasthan Handicraft Emporium, Bombay vide communication dated 9.2.1979(Ex.A/.5) whereby, it was clarified that the representative of the plaintiff might have mistaken something or must have met someone who was not fully aware of the case. The defendant denied the responsibility what the representative of the plaintiff might have reported to it. The copy of the G.T.R. 27406 dated 20.1.1979 which is said to have not been accepted by the plaintiff earlier was again enclosed with the said communication to do the needful. The copy of the G.T.R. No.

27406 has been placed on record as (Ex.A/8). It was further stated in the said letter in unequivocal terms that the goods were entirely on consignment basis and it is the rule of the emporium to return the unsold goods after completion of the accounts. The said letter was also accompanied by a cheque of Rs.347.25.

A perusal of the communication dated 24th April, 1980 sent by the plaintiff addressed to the Managing Director of the defendant Corporation reveals that the goods receipt sent by the defendant Corporation along with the goods returned was not accepted by the plaintiff in the first instance and the same was returned back saying that the goods sent were different from the goods sent by the plaintiff for sale. However, the delivery of the goods was later taken by the plaintiff when the goods receipt was again sent by the defendant Corporation vide communication dated 09.02.1979. From the aforesaid correspondence between the parties, it is apparent that the part of the goods were returned by the defendant to the plaintiff which were duly received by it. From the goods receipt no. 27046 dated 20.1.1979 , one case of wooden handicraft was sent by the defendant Corporation to the plaintiff and as per the issue voucher (Ex.A/9), the goods contained therein were worth Rs.860/-. Similarly, vide goods receipt no.27093 dated 25.1.1979 (Ex.A/11), three cases of the wooden items worth

Rs.1527/-(as per Ex.A/12), were returned to the plaintiff. Thus, in total goods worth Rs.2,387/- appears to have been returned by the defendant Corporation to the plaintiff. The plaintiff having received the said goods should have clarified the position in this regard in the plaint itself. But, no averment whatsoever has been made in the plaint in this regard and straight away the plaintiff has claimed the value of the entire goods treating the same to have been sold. On specific question being put in the cross examination with regard to the goods received, vide Ex.A/8 to A/12 P.W. 1 Madan Kataria stated that "प्रदर्श ए-8 मेरा भेजा हुआ माल है फिर कहा पता नहीं। प्रदर्श ए-9 का माल बिल मुझे दिया या नहीं फिर कहा पता नहीं। प्रदर्श ए-10 चिट्ठी मुझे मिली या नहीं मुझे ध्यान नहीं। प्रदर्श ए-11 का माल मुझे नहीं मिला। प्रदर्श ए-12 बिल मुझे नहीं मिले।". However, the stand taken by the plaintiff in his oral deposition stands belied from documentary evidence Ex.15, letter dated 25th April, 1980 sent by the plaintiff to the Managing Director of the defendant Corporation. Therefore, in my considered opinion, the plaintiff cannot deny that the goods returned vide goods receipts (Ex.A/8) and (Ex. A/11) were not received by it. If the goods returned were not the same goods or the same were in damaged condition then, the plaintiff was required to set out its case accordingly. The plaintiff having suppressed all these material

facts from the pleading cannot claim any relief to the extent of the value of the goods returned to it vide Ex. A/8 and Ex. A/11.

17. Regarding the remaining goods, the defendant having not accounted for and not made payment to the plaintiff, they cannot escape the liability, on the abstract plea that the goods sent by the plaintiff on consignment basis were at its risk and the defendant has no liability to sale the goods or return the unsold goods, without there being any evidence in support thereof. Moreover, as discussed above, on the basis of the evidence on the record, it stands established beyond doubt that the defendant was required to account for the sale proceeds and after deducting the amount of commission, the remaining amount was required to be remitted to the plaintiff and they were also under an obligation to return the unsold goods. Accordingly, the plaintiff is entitled for recovery of the value of the goods after deductions towards, 15% commission payable to the defendant, the value of the goods returned and the amount of freight and octroi paid by the defendant on behalf of the plaintiff. Thus, the issues no. 3,4 and 7 are decided accordingly.

As discussed above, the goods sent by vouchers no. 2531, 2791 and 2792 have been returned by the defendant to the plaintiff and the same have been received by the plaintiff but, the remaining unsold goods have not been returned by the defendant and for that the plaintiff cannot be blamed. Thus, the

issue no. 8 deserves to be decided partly in favour of the defendant.

18. In view of the discussion above, the entitlement of the plaintiff for the recovery of the amount can be determined as under:-

(i)	the value of the goods		Rs.13,025/-
(ii)	the value of the goods returned	(-)	Rs. 2,387/-
	the freight & octroi paid by the defendant on behalf of the plaintiff	(-)	Rs. 621
	Total		Rs.10,017.00
(iii)	Less 15% commission		Rs. 1,502.55
	Amount Due		Rs.8514.45
(iv)	Amount already paid	(-)	Rs 347.25
		Rs.	8167.20

Therefore, as against Rs. 11,075/-, the amount determined by the learned trial Court , the plaintiff is entitled for decree for an amount of Rs.8,167.20 only.

Coming to the question of interest, it is to be noticed that a cheque dated 2.6.1979 for a sum Rs.2,000/- was sent by the defendant to the plaintiff, but, on account of the fault of the plaintiff , the same could not be encashed. Therefore, the finding arrived at by the learned trial court that the plaintiff is not entitled for the interest on the said amount appears to be justified and does not warrant any interference by this Court. Accordingly, the plaintiff is entitled for interest on the amount of

Rs.6,167.20 @ 12%. It is to be noticed that no specific date has come on record as to when the account was required to be settled and the due amount was required to be paid to the plaintiff. However, on the basis of the correspondence on record, it appears that for the first time, the demand for settlement of account was made by the plaintiff vide letter dated 21.4.1978. The suit has been filed by the plaintiff on 1.10.1980. Thus, the plaintiff was deprived of his money for a period about two and half years. Accordingly, the plaintiff is held entitled for interest on the amount of Rs.6,167.20 @ 12% per annum for the said period which is quantified at Rs. Rs.1,850/-. Thus, decree passed by the learned trial Court deserves to be modified accordingly.

19. It has been contended by the plaintiff by way of cross objection that it is entitled for pendente lite and future interest on the decreetal amount @ 12% as against 6% awarded by the learned trial Court. In my considered opinion, in the facts and circumstances of the case when the defendant alone cannot be held responsible for the delayed payment , the rate of interest awarded @ 6% in terms of Section 34 of Civil Procedure Code, 1928 is absolutely justified . The plaintiff is not entitled for any enhanced rate of interest.

20. In the result, the appeal is partly allowed. The decree under appeal is modified . The suit of the plaintiff is decreed with costs against the defendant for an amount of Rs.8,167.20 . The

plaintiff shall also be entitled for interest on amount of Rs.6,167.20 @ 6% per annum w.e.f. date of filing of the suit i.e. 1.10.1980 till the recovery of the decreetal amount. The judgment and decree passed by the learned trial Court shall stand modified accordingly. No order as to costs.

(SANGEET LODHA),J.